

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHANNON LEE KORNELE,

Defendant-Appellant.

UNPUBLISHED

July 7, 2000

No. 218245

Oakland Circuit Court

LC No. 96-149453-FH

Before: Jansen, P.J., and Hood and Saad, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted from his sentence for second-degree home invasion, MCL 750.110a(3); MSA 28.1084(3), entered after a guilty plea. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was originally sentenced on February 25, 1997. In sentencing defendant, the court ordered restitution in the amount of \$12,300. Defendant did not challenge that amount. Resentencing was ordered based on the failure to give defendant the opportunity to review the presentence report. In his motion for resentencing, defendant requested a hearing on the actual amount of damage sustained by the victim. At the resentencing, defendant presented no evidence on the question of restitution, and the court again ordered restitution in the amount of \$12,300.

Defendant moved to lower the amount of restitution, or for a hearing on the issue. The court denied the motion, finding that defendant had failed to establish an actual dispute at sentencing that would require a hearing. *People v Grant*, 455 Mich 221, 243; 565 NW2d 389 (1997).

MCL 780.767(4); MSA 28.1287(767)(4) provides:

Any dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim shall be on the prosecuting attorney.

If a defendant fails to object to the amount of restitution and request an evidentiary hearing, he has waived a challenge under the statute. *People v Gahan*, 456 Mich 264, 276; 571 NW2d 503 (1997). Absent an objection, the court is not required to hold an evidentiary hearing. *Grant, supra*, p 243, n 8. The court is entitled to rely on the amount recommended in the presentence investigation report, which is presumed to be accurate unless defendant effectively challenges the factual information. *Id.*, pp 233-234.

Defendant did not offer any evidence or specific argument to demonstrate that the amount of restitution recommended in the presentence report was inaccurate. Only an actual dispute, properly raised at the sentencing hearing in respect to the amount of restitution, triggers the need to resolve the dispute by a preponderance of the evidence. *Id.*, p 243; *Gahan, supra*, 276, n 16.

Although defendant requested a restitution hearing in his motion for resentencing, he failed to identify an actual dispute regarding the amount of restitution that would trigger the need for a hearing. Defendant waived the opportunity for an evidentiary hearing, and the court was not under an obligation to order such a hearing.

Affirmed.

/s/ Kathleen Jansen

/s/ Harold Hood

/s/ Henry William Saad